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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,690	08/05/2002	Neil J. Rowley	PA-9948	3740
22840	7590	01/31/2005	EXAMINER	
AMERSHAM BIOSCIENCES PATENT DEPARTMENT 800 CENTENNIAL AVENUE PISCATAWAY, NJ 08855			HARTLEY, MICHAEL G	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/069,690

Applicant(s)

ROWLEY ET AL.

Examiner

Michael G. Hartley

Art Unit

1616

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

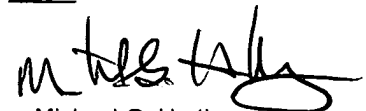
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-9.

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____



Michael G. Hartley
Primary Examiner
Art Unit: 1616

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments of picking and choosing are not persuasive, since the art teaches that silica vials are advantageous for pharmaceutical vials of diagnostic agents, while Felder teaches diagnostic agents as claimed are in vials. There would be motivation to use improved vials therefore. The combined references teach this combination and it is unclear what is being picked and chose, since the claims are broad to a non-radioactive metal complex, clearly covering various diagnostic agents. The obviousness is met by the improvement in silica coated vials for diagnostic pharmaceuticals. There is no requirement for a primary reference to state a deficiency that must be improved to make an obviousness rejection. The combination comes from the art as a whole, which teaches vials of diagnostic agents are improved by coating with silica. One skilled in the art would be motivated to employ this teaching to any pharmaceutical diagnostic agent in vials. Also, the use of "silicon" is clearly used to denote oxides of silicon, or silica, it is noted that the element silicon is found naturally as silica. It is clear from the rejections and the art cited that oxides of silicon are disclosed by the prior art.